

Statewide Ecological Extinction Task Force

Thursday, November 16th, 2017

1:00 p.m. – 4:45 p.m.

Senate Hearing Room, Legislative Hall

Meeting Attendance

Task Force Members:

Present:

Senator Hansen
Representative Gray
Douglas Tallamy*
Katherine Holtz
Maria Evans
Matthew Sarver
Robert Thornton
Susan Barton**
James White
Michael Costello
Faith Kuehn
Kathy Stiller
Joseph Rogerson

Email:

Stephanie.Hansen@state.de.us
Ronald.Gray@state.de.us
Dtallamy@udel.edu
kthholtz@aol.com
Maria@delawarerealtor.com
Matt@matthewsarver.com
Silverstok@aol.com
Sbarton@udel.edu
Jim@delawarenaturesociety.org
Michael.Costello@sussexcountysde.gov
Faith.Kuehn@state.de.us
Kstiller@brightfieldsinc.com
Joseph.Rogerson@state.de.us

**Represented by Ashley Kennedy*

***Represented by Valann Budischak*

Absent:

Senator Richardson
Representative Heffernan
Chris Bason
Tracy Surles
Michael Petit De Mange
Sarah Cooksey

Bryant.Richardson@state.de.us
Debra.Heffernan@state.de.us
Chrisbason@inlandbays.org
Tnsurles@nccde.org
Michael.Petitdemange@co.kent.de.us
Sarah.Cooksey@TNC.org

Staff:

Jennifer Parrish, Legislative Assistant

Jennifer.Parrish@state.de.us

Attendees:

Dave Carey

Shauna Thompson

C. Scott Kidner

Greg DeCowsky

Hannah Greenberg

Organization:

Pemberton Branch

Pemberton Branch

Pemberton Branch

DNREC (Retired)

Delmarva Ornithological Society

The Task Force meeting was brought to order at 1:00 p.m.

Senator Hansen brought the meeting to order. The Task Force reviewed and approved the minutes from the last meeting. Senator Hansen noted that there were two additions to the agenda for this meeting: a preview of items for discussion for the final meeting, and a short presentation on the research completed by the Task Force interns.

Senator Hansen guided the discussion to the topics to be addressed at the November 28th meeting. These include three remaining categories of recommendations to be voted on (funding the Open Space program, legislation to prohibit the sale of invasive species, and deer management), as well as the possibility of creating a commission or other possible next steps to implement the recommendations of the Task Force. She noted that there is an existing Delaware Invasive Species Council, a nonprofit, volunteer-driven organization, that is concerned with some of the issues the Task Force has addressed. Faith Kuehn added that there is also a Delaware Native Plant Society. Senator Hansen suggested that the Task Force can decide at the next meeting if there is a need to establish a working group to implement our recommendations, perhaps in collaboration with these and other entities. Another topic of discussion for the next meeting will be whether the Task Force should support the Recovering America's Wildlife Act.

Senator Hansen reminded the Task Force that the final report will be due December 1st, shortly after the final meeting on November 28th. It will include biographies of Task Force members, minutes from the meetings, the recommendations, and other materials submitted by Task Force members. She also noted that there will be a group photo of the Task Force taken at the final meeting.

Jennifer Parrish (Legislative Assistant) presented the results of the research she and three interns conducted on the sale of native versus non-native species in Delaware. Five stores in New Castle County were surveyed, representing a mix of nurseries and big-box retailers: Lowe's, Home Depot, Countryside Nursery and Garden Center, Mid-County Material Supply and Garden

Minutes prepared by Jennifer Parrish, Legislative Assistant & Ashley Kennedy, Task Force Assistant

Center, and Willey Farms. The types of plants being sold as well as the volume of plants on hand were recorded. At each of the five stores, the percentage of non-native plant species being sold was much higher than the percentage of native plant species, and similarly, the volume of non-native plants on hand was much higher than the volume of native plants. Of the 1,346 plant species recorded across the five stores, 1,047 (77.8%) were non-native. These results were similar to those found by researchers from Mount Cuba Center, who had surveyed 14 nurseries in the Mid-Atlantic region and determined that 24% of species sold were native.

Senator Hansen pointed out that not only is the percentage of non-native plant species sold in Delaware slightly higher than it is for the Mid-Atlantic region as a whole, but also, the percentage of non-native species considered invasive or on the invasive watch list is higher in (7% in Delaware to 4% in the Mid-Atlantic region). She also noted that the volume of invasive species sold at the five stores ranges from a low of 2.7% at Countryside Nursery and Garden Center to a high of 10.65% at Lowe's.

Robert Thornton (Home Builders Association) suggested inviting board members from the big-box retailers to discuss changes they could implement to reduce the amount of non-native and invasive species sold and make up the losses elsewhere.

Jennifer Parrish noted that the types and volume of plants on hand at each store varies throughout the year based on the season.

Senator Hansen guided the discussion to the “**Government Leads by Example**” recommendations to be voted on at this meeting. The first recommendation reads “*All Delaware state facilities and departments should set the example, reducing lawn and replacing with native plants or pollinator gardens, and revising land management practices to be more pollinator friendly.*” The motion to approve this recommendation passed with all in favor.

During discussion of the second recommendation, Matthew Sarver (Delmarva Ornithological Society) suggested changing “in public plantings” to “on public property”, such that it reads “*Create incentives for using native plants on public property.*” Representative Gray inquired what kinds of incentives this would entail; Senator Hansen suggested awards and recognition/acknowledgement as possible options. The motion to approve this recommendation passed with all in favor.

Faith Kuehn (Department of Agriculture Division of Plant Industries) suggested changing “invasive species” to “invasive plants” in the third recommendation, such that it reads “*Provide funding/incentives for the removal of invasive plants on public property and, where appropriate, replanting with native species.*” Kathy Stiller (Delaware State Chamber of Commerce) voted

against this recommendation; all other Task Force members present voted in favor and the motion to approve passed.

During discussion of the fourth recommendation, which entailed promoting the use of native plants in public and private plantings, Faith Kuehn pointed out that private property should not be addressed under the heading “Government Leads By Example.” Representative Gray noted that this recommendation was similar to the second one. The motion to remove this recommendation also passed with all in favor.

Senator Hansen guided the discussion to the fifth recommendation, which concerned providing incentives for reduced lawn area. Maria Evans (Delaware Association of Realtors) suggested removing the word “private”. She also commented that children need lawns to play in, and lawns take carbon dioxide out of the air. Ashley Kennedy (University of Delaware) noted that children can play in meadows and forests as well as lawn, and those habitats provide greater ecosystem services than lawns do. James White (Delaware Nature Society) commented that we have ample lawn space available and added that this recommendation is not taking away recreational space. Senator Hansen noted that realistically, people are not going to become so avid about reducing lawn to protect native species that soccer fields will be at risk of being eliminated. Maria Evans added that in Rehoboth Beach, regulations compel people to replace their stone front yards with grass. Senator Hansen suggested adding “passive open-space” before “public landscapes”. With these additions and deletions, the final wording of the recommendation reads “*Provide incentives/requirements for reduced lawn areas in passive open-space public landscapes.*” The motion to approve this recommendation passed with all in favor.

The sixth recommendation originally included a list of examples of sites where demonstration landscapes could be implemented, including hospitals, libraries, and schools; Faith Kuehn made the point that not all hospitals, schools, etc. are public. Matthew Sarver suggested striking “with groundcovers ultimately covering soil surface” because this wording was too specific to apply to all areas; he pointed out that ground-nesting bees require access to the soil surface. The resulting recommendation reads “*Provide funding/incentives for demonstration landscapes on public land to demonstrate sustainable landscape practices including reduced lawn, use of native plants, reduced mulch, etc.*” Kathy Stiller voted against this recommendation; all other Task Force members present voted in favor and the motion to approve passed.

During discussion of the seventh recommendation, which concerned using native landscaping for state projects, James White and Valann Budischak (Delaware Landscape and Nursery Association) said that the wording was too broad. Faith Kuehn noted that recommendation 12 concerns the same topic. The motion to remove Recommendation 7 passed with all in favor.

Recommendation 8 concerned using native landscaping for county projects. Due to its similarity to Recommendations 7 and 12, this recommendation was removed, with all Task Force members present voting in favor of removal.

Senator Hansen guided the discussion to the ninth recommendation, which reads “*Encourage municipalities to adopt native landscaping in their codes.*” The motion to approve this recommendation passed with all in favor.

During discussion of the tenth recommendation, which concerned requiring restoration plans for public lands, Faith Kuehn and Joseph Rogerson (DNREC) voiced a concern that it was too vague. Mr. Rogerson and James White noted that agencies such as DNREC typically have restoration plans in place, but lack the funds to implement them. The motion to remove this recommendation passed with all in favor.

The eleventh recommendation concerned requiring publicly owned lands to eradicate invasive species. James White and Faith Kuehn commented that the wording of this recommendation was too strong, as requiring the eradication of invasive species is not logistically feasible. Joseph Rogerson agreed and noted that this is an important issue, but this recommendation is not the best vehicle to address it. Ashley Kennedy noted that if the language is softened (i.e., changing “require” to “encourage”), this recommendation becomes redundant as it echoes the intent of Recommendation 3 above. The motion to remove this recommendation passed with all in favor.

During discussion of the twelfth recommendation, Michael Costello (Sussex County) suggested changing “require” to “encourage” such that it reads “*Encourage new public facilities to use native plants in landscaping.*” Maria Evans asked if there would be a great price difference between native and non-native plants. James White and Matthew Sarver said that there would not be a significant price difference. Ashley Kennedy said that the short-term costs of planting native species should be weighed against the long-term costs of allowing non-native and invasive plant species to proliferate. Matthew Sarver added that native plants contribute a quantifiable set of ecosystem services that would offset any costs of planting. The motion to approve this recommendation passed with all in favor.

Valann Budischak suggested adding the word “median” to the thirteenth recommendation, and Senator Hansen suggested changing “grass” to “vegetation”. Matthew Sarver suggested adding “in late fall or early spring”, such that it reads “*On all highway medians, mow a strip of grass adjacent to the roadway (beauty strip) and allow the rest of the vegetation to grow. Mow median once or twice a year in late fall or early spring.*” Mr. Sarver noted that this change would make this recommendation more ecologically sound, as the timing of the mowing is particularly important (e.g., even mowing occurs only once a year, it could knock out the local monarch

caterpillar population if the timing is right). The motion to approve this recommendation passed with all in favor.

Senator Hansen guided the discussion to the fourteenth recommendation. Matthew Sarver suggested adding “in early spring or late fall”, such that it reads “*On all highway roadsides, mow one mower pass above the ditch line to allow for designed drainage function. Mow the rest of the right of way once or twice a year in early spring or late fall as needed to control invasive species. Woody vegetation may be allowed to grow on some rights of way if invasives are controlled.*” Katherine Holtz (Delaware Farm Bureau) noted that mowing can help to slow the spread of some invasive species. The motion to approve this recommendation passed with all in favor.

The fifteenth recommendation reads “*On highway cloverleaves created by on/off ramps, mow one mower pass adjacent to the ramp/roadway. Mow the rest of the cloverleaf one or two times a year as needed to control height, visibility and invasive species. Woody vegetation may be allowed to grow on some rights of way if invasive species are controlled.*” The motion to approve this recommendation passed with all in favor.

The sixteenth recommendation reads “*On secondary roads, apply reduced mowing standards whenever feasible.*” Katherine Holtz noted that reduced mowing could lead to the spread of invasive species. She voted against this recommendation; all other Task Force members present voted in favor and the motion to approve passed. Representative Gray asked if the Task Force was going to talk to DelDOT about this topic. Senator Hansen replied that we should ensure that going forward, whatever commission/working group we appoint to implement these recommendations will work collaboratively with DelDOT.

During discussion of the seventeenth recommendation, Valann Budischak noted that it would be financially difficult to implement. Ashley Kennedy suggested changing “remove” to “encourage the removal” and Matthew Sarver suggested adding “woody” such that it reads “*Encourage the removal and stump treatment of woody invasive plants on DelDOT rights of way.*” The motion to approve this recommendation passed with all in favor.

The eighteenth recommendation reads “*On new highway projects that involve landscaping, plant predominantly native species.*” The original wording included “at least 80%” at the end, but James White and Valann Budischak commented that DelDOT already strongly favors the use of native plants, so Representative Gray suggested removing that specification as it seemed unnecessary. The motion to approve this recommendation passed with all in favor.

Senator Hansen suggested putting the nineteenth and twentieth recommendations on hold until the next/final meeting, when the discussion of the next step in the implementation of these recommendations will be held. The Task Force agreed and discussion moved to the twenty-first recommendation.

James White suggested changing the wording of the twenty-first recommendation, such that it reads “*Encourage state and local governments to make better use of existing land by creating better habitats on available land. Examples could include creating native meadows, creation of wetlands, reforestation, etc.*” The motion to approve this recommendation passed with all in favor.

During discussion of the twenty-second recommendation, Maria Evans raised a concern that reduced salt use on the roads could lead to dangerous driving conditions. Matthew Sarver commented that road salt is extremely detrimental to aquatic habitats, and in other states (e.g., Massachusetts and other New England states, which experience more snow and icy conditions than Delaware does), there exists a well-established practice of designating areas with particularly sensitive species or valuable habitats to receive reduced salt, in combination with alternative safety measures such as the use of sand. Maria Evans advocated removing part (A) from this recommendation, stating that Delaware roads are already impacted by inclement weather as well as impaired drivers due to the opioid crisis. James White commented that this Task Force is charged with saving species, not highway safety, and we should pass these recommendations on to DelDOT and work collaboratively with them to find solutions that work towards both ends (highway safety and saving species). Michael Costello suggested removing all the examples A-E; Matthew Sarver and James White disagreed, saying that it would be better to provide specific examples to DelDOT based on biological research and models from other states. Taking these considerations into account, Senator Hansen suggested changing the wording such that this recommendation reads:

“Review DelDOT’s policies and work collaboratively to enhance the role of DelDOT in species conservation, without reducing highway safety, by:

(A) designating reduced salt use in environmentally sensitive areas

(B) native plantings

(C) increased collaborative management of ROWs and water control structures

(D) Coordinate timing of mowing and construction to minimize impacts

(E) Integrate key habitat and Species of Greatest Conservation Need (SGCN) conservation into long-range transportation planning.”

Maria Evans voted against this recommendation; all other Task Force members present voted in favor and the motion to approve passed.

Senator Hansen guided the discussion to the twenty-third recommendation, which concerned increasing species and habitat management on state wildlife areas, state parks, and state forests.

Faith Kuehn commented that the wording implies that species and habitats are not being managed well in Delaware. James White agreed that the wording was too broad and that the state is already working hard on species and habitat management. The motion to remove this recommendation passed with all in favor.

Joseph Rogerson suggested changing the wording of the twenty-fourth recommendation such that it reads “*Given the State of Delaware owns a large percentage of land in the state, we recommend increasing funding, staffing, and better management practices of state owned lands.*” Kathy Stiller voted against this recommendation; all other Task Force members present voted in favor and the motion to approve passed.

The twenty-fifth recommendation concerned establishing landscape buffers along tax ditches. It originally included several specific examples; James White commented that this level of specificity was not required at this stage. He also suggested adding “increase biodiversity” to wording. The amended recommendation reads “*Work with DNREC and the individual Tax Ditch Organizations to explore the feasibility of establishing landscape buffers along tax ditches in order to reduce erosion along ditch banks, reduce maintenance requirements, and improve water quality.*” The motion to approve this recommendation, under the condition that it is moved to the list of “Education” recommendations, passed with all in favor.

At this juncture (about 3:00), the Task Force agreed to take a ten-minute break before moving on to the next list of recommendations, those listed under “**Legislation Affecting Development.**”

After reconvening, the Task Force began discussion of the first recommendation. Senator Hansen and James White suggested changing the wording such that it reads “*Review existing regulations to determine their effectiveness in protecting state-endangered species.*” Maria Evans made a motion to strike this recommendation, but the motion did not pass. Matthew Sarver made the point that this is of critical importance in protecting endangered species, and James White added that part of our job on this Task Force is to explore new ways to protect them. Representative Gray voted against this recommendation; all other Task Force members present voted in favor and the motion to approve passed.

The second recommendation concerned density bonuses for preservation of native species. The Task Force agreed that this recommendation should be left for future discussion with the commission/working group tasked with implementing the recommendations. The motion to remove this recommendation passed with all in favor.

The third recommendation concerned reducing stormwater management requirements for communities landscaped with native species. Faith Kuehn commented that the Department of

Agriculture was opposed to this one because stormwater management serves multiple useful purposes and should not be reduced. The motion to remove this recommendation passed with all in favor.

The fourth recommendation concerned requiring projects that receive state permits to use native landscaping in common areas. Faith Kuehn pointed out that this wording is too broad as it did not specify the type of permit(s) in question. The motion to remove this recommendation passed with all in favor.

The discussion moved to the fifth recommendation. Maria Evans suggested changing “ensure” to “encourage”, such that it reads “*Encourage protection of Delaware’s rarest plant communities such as Atlantic White Cedar Swamps; Coastal Plain Ponds; Interdunal Swales; Sea-level Fens; Piedmont Streamside Seepage Wetland and Piedmont Tuliptree Rich Woods.*” The motion to approve this recommendation passed with all in favor.

Senator Hansen guided the discussion to the Overarching Statements for the two categories of recommendations discussed at this meeting. She noted that Douglas Tallamy had indicated previously that he would like to change the wording from “ecology” to “ecosystem” in the first statement, for “Government Leads by Example.” Matthew Sarver recommended making it “ecosystems” (plural) such that it reads “*A critical part of demonstrating to the public the importance of native species to our local ecosystems is by our government taking the lead and providing native species landscapes and management on our public property.*” The motion to approve this statement passed with all in favor.

The second Overarching Statement pertained to the “Legislation Affecting Development” category. Michael Costello and Matthew Sarver suggested changing the wording such that it reads “*In order to improve and protect our ecosystems during land development, legislation at the state and/or local level is/may be necessary. The term ‘legislation’ is used loosely and may include such things as a bill or resolution passed by the General Assembly, an ordinance or resolution passed by a local government, a change in the regulations administered by the state or local government, or a change in state or local government policy.*” Faith Kuehn, Katherine Holtz, Valann Budischak, Michael Costello, Kathy Stiller, Representative Gray, and Maria Evans voted for “may be necessary”; Matthew Sarver, James White, Ashley Kennedy, and Senator Hansen voted for “is necessary”. Due to failure to secure a majority vote one way or the other, it was decided that this recommendation would be put on hold until absentee voting could be completed to allow other Task Force members to participate.

Senator Hansen turned the discussion back to the recommendations, starting with Recommendation 6. Ashley Kennedy suggested changing “conductivity” to “connectivity” and

Matthew Sarver suggested clarifying the wording such that it reads “*Look for linkages and connectivity between native habitats in existing and new development to connect native habitat in subdivision site plans.*” The motion to approve this recommendation passed with all in favor.

Matthew Sarver noted that Recommendation 7, which concerned favoring native plants in all new subdivisions, and Recommendation 8, which concerned keeping development out of the woods, were too broad to be strictly useful. The motions to remove each of these recommendations passed with all in favor.

The ninth recommendation concerned requiring buffers of no disturbance around sensitive habitats. Faith Kuehn pointed out that it bore a strong similarity to Recommendation 17 below, with the latter being more detailed/specific. The motion to remove this recommendation passed with all in favor.

The tenth recommendation concerned bioretention facilities. Senator Hansen noted that it would serve as a good model for future legislation. Michael Costello suggested that it may be beyond the purview of this Task Force as it pertains to issues that other groups are already addressing in great detail. The motion to remove this recommendation passed with all in favor.

Senator Hansen guided the discussion to the eleventh recommendation. She suggested changing “draft legislation” to “encourage drafting”, and Michael Costello suggested adding “when maintained in accordance with an approved plan”, such that it reads “*Encourage drafting of legislation for use by local governments that would provide exemptions for common areas, buffer zones, and open space areas from tall weeds/grass property code violations, when maintained in accordance with an approved plan.*” The motion to approve this recommendation passed with all in favor.

James White suggested changing the wording of Recommendation 12 such that it reads “*Encourage the preservation of the remaining intact forest habitat (largest tracts should receive highest priority).*” Maria Evans asked for clarification as to whether this applies both to public and private land. James White replied that while it is unspecified in the text of the recommendation, most forest habitat in the state is on private land. Representative Gray voiced a concern that this recommendation may infringe on private property rights. Kathy Stiller suggested moving this recommendation to the “Incentivize Private Landowner” list of recommendations. The motion to approve this recommendation, on the condition that it is moved to that list, passed with all in favor.

James White suggested adding Recommendation 13 to the list of “Incentivize Private Landowners” recommendations as had been done with 12. It reads “*Preserve or otherwise*

conserve and manage as much of the remaining freshwater wetlands as possible – e.g. Delmarva Bays (Coastal Plain Ponds).” The motion to approve this recommendation, on the condition that it is moved to the list of “Incentivize Private Landowners” recommendations, passed with all in favor.

Senator Hansen guided the discussion to the fourteenth recommendation, “*Encourage Kent and Sussex Counties to adopt overlay zoning ordinances incorporating sensitive natural resources.*” Representative Gray asked if New Castle County already has such ordinances in place; Senator Hansen replied in the affirmative. The motion to approve this recommendation passed with all in favor.

During discussion of the fifteenth recommendation, which reads “*Encourage the revisitation of wetlands regulations to ensure protection of freshwater non-tidal wetlands via regulation and incentives*”, Matthew Sarver noted that this is a particularly important issue which has received attention from the state in the past but without a satisfactory outcome. James White noted that he is optimistic that common ground can be found. Michael Costello asked if wetlands can be relocated; James White replied that the state has done a lot of wetland recreation with some success, but it is far more difficult than preserving the original wetland. Kathy Stiller, Katherine Holtz, Michael Costello, Faith Kuehn, Representative Gray, and Maria Evans voted against this recommendation while James White, Matthew Sarver, Ashley Kennedy, Valann Budischak, and Senator Hansen voted in favor. As this recommendation did not receive a majority vote to either pass, delete, or further recommend, it was decided that it would be put on hold until absentee voting could be completed to allow other Task Force members to participate.

The discussion moved to the sixteenth recommendation, which reads “*Encourage all counties to adopt environmental design standards for development projects in order to protect key wildlife habitats and species of greatest conservation need (SGCN).*” Kathy Stiller voted against this recommendation; all other Task Force members present voted in favor and the motion to approve passed.

Recommendation 17 concerned increasing the width of non-disturbance areas surrounding wetlands, waterbodies, and conveyance systems. James White commented that buffers are beneficial from an ecological standpoint (improving water quality, etc.) but added that every type of ecosystem needs a different kind of buffer, so the wording of this recommendation was too specific to be applicable in all situations. The motion to remove this recommendation passed with all in favor.

Recommendation 18 concerned using the passive open space provisions of the Subdivision and Land Development ordinance to require reintroduction of wildlife habitats and upland forests.

Minutes prepared by Jennifer Parrish, Legislative Assistant & Ashley Kennedy, Task Force Assistant

The members of the Task Force present decided that they lack sufficient knowledge of the ordinance in question to vote on this topic. The motion to remove this recommendation passed with all in favor.

The discussion moved to the nineteenth recommendation. Matthew Sarver suggested removing the last clause (“to control invasive species”), such that it reads “*Ensure that all State, County, and local codes allow for managed meadow areas as defined by neatly mowed edges, mowed paths, and management plans.*” The motion to approve this recommendation passed with all in favor. Faith Kuehn inquired which list the Task Force will defer to as the authority on invasive plant species, and recommended using the list provided by the Invasive Species Council. James White and Matthew Sarver agreed and Senator Hansen said that a formal decision will be made at the next and final meeting.

Senator Hansen invited members of the public to speak at this juncture.

Scott Kidner from the Pemberton Branch took a moment to say that concern for private property rights motivated his group to attend these meetings, and added that he looks forward to submitting public comment on the finalized report.

Greg DeCowsky (DNREC, retired) commented that private property rights go both ways, and shared that he lives adjacent to an abandoned property that has subjected his own property to a succession of one invasive species after another over the past twenty years due to the neglect of the neighboring property.

Senator Hansen reminded Task Force members that the final meeting is set for 1 p.m. on Tuesday, November 28th.

The meeting was adjourned at 4:45 p.m.